



STATE OF IOWA  
MASTER AGREEMENT

MA# 005 CT2882 X 2

EFFECTIVE BEGIN DATE: 12-19-2003  
EXPIRATION DATE: 12-31-2006  
PAGE: 1 of 3

BUYER : ASHLEY SUPER  
ashley.super@iowa.gov  
515-281-7073

FOB

PAYMENT TERMS (%): DAYS:

**VENDOR:**

Microsoft Licensing Gp  
6100 Neil Rd Ste 210

Reno, NV 89511-1137  
USA

**VENDOR CONTACT:**

No Contact Specified

PHONE: 515 999-9999 EXT:

EMAIL:

VENDOR #: 91114444200

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**DESCRIPTION OF ITEMS CONTRACTED**

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**MICROSOFT MASTER SERVICES AGREEMENT**

This Shortform Contract For Payment Purposes Through Ifas / I3 Only. The Complete Agreement Can Be Viewed At The Department Of Administrative Services, General Services Enterprise Hoover Building, Level A, Des Moines, Iowa, 50319-0105. This Modified Master Services Agreement (Msa) Provides Access To Enhanced Ms Product Support And Is Not Intended For Consulting Services Requiring Competitive Bid.

**RENEWAL PERIODS**

FROM 01-01-2006 TO 12-31-2006

FROM 01-01-2007 TO 12-31-2007

FROM 01-01-2008 TO 12-31-2008

**THRESHOLDS**

MINIMUM ORDER AMOUNT:

MAXIMUM ORDER AMOUNT:

NOT TO EXCEED AMOUNT:

**AUTHORIZED DEPARTMENT**

ALL

SUB Political Sub-divisions

**TOTAL \$0.00**

VENDOR:

APPROVED BY:

THIS MA IS SUBJECT TO THE TERMS AND  
CONDITIONS ATTACHED HERETO.  
PLEASE SEE ATTACHMENTS FOR  
FURTHER DESCRIPTIONS.



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**PAGE: 2 of 3**

LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000		91829	\$0.000000
			Computer Software Consulting	\$0.000000



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**EFFECTIVE BEGIN DATE: 12-19-2003**  
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**PAGE: 3 of 3**

**TERMS AND CONDITIONS**

**N45**  
NET 45 DAYS

(Modified NSA Agreement)

# Microsoft Product Services and Support Services Agreement – State and Local (NON-STANDARD) Changes: Italicized and Bold

Microsoft Product Services and Support Services  
Agreement Number  
Microsoft affiliate to complete

CT 2882

This Microsoft Product Services and Support Services Agreement is entered into between the following entities as of the effective date identified below (the "Product Services and Support agreement"). This Product Services and Support agreement is comprised of this cover page and the attached terms and conditions, the terms of which are incorporated herein by this reference. Each party will notify the other in writing if any of the information in the following table changes.

Customer		
Name of Customer		Contact Name (This person receives notices under this Product Services and Support agreement pursuant to section 11 (Notices).
Street Address		Contact Email Address
City	State/Province	Phone
Country	Postal Code	Fax
Microsoft		
Notices to Microsoft should be sent to (Microsoft affiliate to complete):  Kevin Hartley Microsoft Corporation 5335 Wisconsin Avenue, NW Suite 600 Washington, DC 20015		Copies should be sent to:  Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 Services Attorney (425) 936-7329 fax USA

This Product Services and Support agreement contains terms of the relationship between you and us. If you contract for services from us under this Product Services and Support agreement, the specific terms of those transactions will be contained in this Product Services and Support agreement and any work orders, services descriptions, or other statement of services incorporating this Product Services and Support agreement by reference (each a "statement of services").

By signing below, each party acknowledges that it has read and understood the terms of this Product Services and Support agreement and agrees to be bound by these terms.

Customer	Microsoft Affiliate
Name of Customer (please print) State of Iowa	Name Microsoft Corporation
Signature Deborah Cleary	Signature David T. Gallagher
Name of person signing (please print) Deborah Cleary	Name of person signing (please print) David T. Gallagher
Title of person signing (please print) Division Director	Title of person signing (please print) Contracts Manager
Signature date 12/14/03	Effective date (date Microsoft countersigns) 1-13-04

In this Product Services and Support agreement, a "**party**" or "**parties**" means you and/or us as the context requires. "**You**" means the entity that has entered into this Product Services and Support agreement and may also refer, as the context requires, to your affiliates who enter into a statement of services under this Product Services and Support agreement. "**We**," "**us**," or "**our**" means, Microsoft Corporation and its affiliates. "**Affiliate**" means (i) with regard to you, any government agency, department, instrumentality, division, unit or other office of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; together with, as mandated by law, any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality located within your state's jurisdiction and geographic boundaries; provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (ii) with regard to us, any legal entity that we own, which owns us, or which is under common ownership with us.

1. **Services and use.** We agree to provide **Microsoft** product support, **Microsoft product** consulting and other **Microsoft product** services (referred to collectively and individually herein, as the context requires, as "**services**") under the terms and conditions of this Product Services and Support agreement and any statement of services. The precise scope of the services will be specified in the statements of services. You or any of your affiliates can enter into statements of services under this Product Services and Support agreement with our local affiliate. Our ability to deliver the services depends upon your full and timely cooperation, as well as the accuracy and completeness of any information you provide. This Product Services and Support agreement does not obligate either party or its affiliates to enter into any statements of services.

Except as otherwise provided herein, each statement of services will specify your rights in service deliverables and fixes delivered under it. Your right to use fixes is governed by the license agreement for the affected product or, if the fix is not provided for a specific product, any other use terms we provide. All fixes provided under a statement of services are licensed to you. We do not transfer ownership rights in any products (which include any commercial, free, pre-release and beta products) and we reserve all rights not expressly granted. For the purposes of this Product Services and Support agreement and any statement of services, "**service deliverable(s)**" means any computer code or materials, except fixes or products, we leave to you at the conclusion of our performance of the services; "**fixes**" means any product related bug fixes, workarounds, patches, beta fixes or beta builds; and "**product(s)**" means any computer code or materials comprising commercial, free, pre-release or beta products we make available to you for license which are published by us, our affiliates, or a third party. Any products provided pursuant to a statement of services will be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. You are responsible for paying any licensing fees associated with products.

2. **Restrictions on use.** You may not:

- a) Rent, lease, lend or host service deliverables or fixes, except as otherwise provided in a statement of services;
- b) Reverse engineer, de-compile or disassemble fixes or service deliverables, except to the extent expressly permitted by applicable law despite this limitation; or
- c) Transfer licenses to, or sublicense fixes or service deliverables to any government entity or quasi governmental entity, except for your affiliates as specifically authorized by a statement of services.

You agree to comply with all applicable international and national laws that apply to the products, fixes and service deliverables, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see <http://microsoft.com/exporting>.

3. **Supportability.** During the term of a statement of services where we agree to provide product support, we can add support for new products or discontinue support for existing products. If we discontinue support for a product, we will give you six months prior notice. If we sell the intellectual property rights of a product to another company, we will give you notice of the sale and at the time of such notice will either (i) arrange for the other company to continue the support; or (ii) continue support ourselves for 90 days to give you time to make alternative arrangements.

There may be cases where your implementation of our products cannot be effectively supported. As part of providing the support services, we will notify you if we reach that conclusion. If you do not modify the implementation to make it effectively supportable within 30 days after the notice, we will not be obligated to provide additional support services for that implementation, however we will continue to provide support for your other supportable implementations covered by the statement of services.

For statements of services for product support, we will use commercially reasonable efforts to provide the support services for those products covered in the statement of services, provided they are validly licensed by you.

4. **Fees.** You agree to pay us (or our designees) the fees described in each statement of services. The fees do not include fees for products. Unless otherwise stated in a statement of services, (i) you agree to pay within **45** calendar days of the date of our invoice and (ii) we will not change our hourly rates identified in a statement of services during its term, but we may adjust our hourly rates prior to entering any new statement of services. Our fees exclude any taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes), which will be billed to and paid by you, if applicable. We are responsible for taxes based upon our personal property ownership and net income. We will assess a finance charge of the lesser of .5% per month or the highest amount allowed by law on all past due amounts. We will have no obligation to continue to provide services if you fail to make timely payment.

5. **Confidentiality.** Subject to the requirements of your public records and trade secret laws (if any) and Iowa Code Chapter 22, Examination of Public Records dated 11/24/03:

a. **Confidential information.** Confidential information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes, but is not limited to, non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of this Product Services and Support agreement and any statement of services. Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it from the other party; or (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality under this Product Services and Support agreement.

b. **Use of confidential information.** Except as expressly provided for in this section 5, for a period of five years after initial disclosure, neither party will use the other's confidential information without the other's written consent except in furtherance of this business relationship or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the party compelled to make the disclosure will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.

You and we will take reasonable precautions to safeguard each other's confidential information. Such precautions will be at least as great as those each party takes to protect its own confidential information. Each party may disclose the other's confidential information to its employees or contractors only on a need-to-know basis, provided that such employees or contractors are subject to confidentiality obligations no less restrictive than those contained herein. When confidential information is no longer necessary to perform any obligation under any statement of services, the receiving party will at the other's request either return it or destroy it.

c. **Retained rights.** Each party is free to develop their respective products independently without the use of the other's confidential information. Neither you nor we are obligated to restrict the future work assignments of people who have had access to confidential information. In addition, you, we and these people are free to use the information that these people retain in their unaided memories related to information technology, including ideas, concepts, know-how or techniques, so long as such use does not disclose confidential information of the other party in violation of this section 5. This use will not grant either party

any rights under the other's copyrights or patents and does not require payment of royalties or separate license.

Either party may provide suggestions, comments or other feedback to the other with respect to the other's confidential information. Feedback is voluntary and the party receiving feedback is not required to hold it in confidence. The party receiving feedback will not disclose the source of feedback without the providing party's consent. Feedback may be used for any purpose without obligation of any kind.

- d. ~~Parties agree that Microsoft's work is not works for hire. Works made for hire. Work produced for the STATE shall be considered work made for hire and shall be owned solely by the STATE. If the works are not works for hire, then we will be required to make an exclusive, perpetual, royalty-free assignment of all copyrights in such materials to the STATE and that we have the right to do so.~~

NON EXCLUSIVE

- e. **Right to Use Intellectual Property.** To the extent we have the right to do so, the furnishing or using of any intellectual property by us in completing this contract shall confer upon the STATE the unrestricted, irrevocable right under our intellectual property rights, as only applicable to affiliates and political subdivisions, to make, have made, use, sell, license, publish, and/or lease any such intellectual property without payment of additional consideration by STATE.
- d. **Cooperation in the event of disclosure.** Each party will immediately notify the other upon discovery of any unauthorized use or disclosure of the other party's confidential information and will cooperate in any reasonable way to help the other regain possession of the confidential information and prevent further unauthorized use or disclosure.
- e. **Knowledge base.** We may use any technical information we derive from providing services related to our products for problem resolution, troubleshooting, product functionality enhancements and fixes, for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.

6. a. **Warranties. (Time and material projects)** We warrant that all services will be performed in a good workmanlike manner using generally accepted industry standards and practices.

- b. **Warranties. (Fixed price projects)** Subject to a mutually agreed statement of services which specifically incorporates this warranty by reference, each statement of services will address such matters as project scope, functional specification, change control process, assumptions and dependencies, acceptance criteria and process, milestone payments and termination payments. Except as otherwise may be provided in a statement of services, we will warrant to you that, for a period of sixty (60) days or more as may be mutually agreed upon in a statement of services following final acceptance of the service deliverable by you (the "Warranty Period"), any service deliverable and any associated documentation developed by us for you hereunder shall materially conform to the specifications specified in a statement of services. In the event you notify us in writing of a breach of the foregoing warranty during the Warranty Period, we shall promptly use reasonable efforts to remedy such breach at no additional expense to you. In the event that we, after using reasonable efforts, are unable to remedy such breach, our sole and exclusive remedy in connection with such breach shall be to refund the amount paid by you for such non-conforming service deliverable. Notwithstanding the foregoing, we shall have no obligation or liability to you under this warranty to the extent that a nonconformity results from: (i) your use of such program service deliverable in a manner inconsistent with the documentation therefore; (ii) alterations or modifications made to such service deliverable by you or a third party; (iii) defects in any third party computer program, including the failure of any such service deliverable to operate in strict accordance with specifications; (iv) malfunctions of your computer hardware or system environment occurring through no fault of ours; (v) storage, operation, use or maintenance of such service deliverable in a manner or an environment inconsistent with the associated documentation that is delivered to you; (vi) your failure to use any corrections or

*enhancements provided by us; (vii) your use of the service deliverables in combination with any product or information not provided by us; or (viii) information, materials or specifications provided by or on behalf of you; in each case, whether or not we consent. Notwithstanding anything in this master agreement, you understand that we shall bear no responsibility for the performance, repair or warranty of any of your software or hardware product or any software, hardware product, or service provided to you by a third party and you shall look solely to the third party provider for all remedies and support with regard to such products or service.*

7. **No other warranties.** EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN SECTION 6 (WARRANTIES), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY CONDITION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION. WE WILL NOT BE LIABLE FOR ANY THIRD PARTY SERVICES OR PRODUCTS UNLESS SUCH THIRD PARTY SERVICES OR PRODUCTS ARE EXPRESSLY PROVIDED UNDER A STATEMENT OF SERVICES, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS PRODUCT SERVICES AND SUPPORT AGREEMENT.
8. **Defense of infringement and misappropriation claims.** We will defend you against any claims made by an unaffiliated third party that any product, fix, or service deliverables infringes its patent, copyright or trademark or misappropriates its trade secret and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) specifications, code, or materials you provide; (ii) your running of the product, fix or service deliverables after we notify you to discontinue running due to such a claim; (iii) your combining or altering the product, fix or service deliverables with a non-Microsoft product, data or business process; (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process; (v) your altering the product, fix or service deliverables; (vi) use of, or access to, products, fixes or service deliverables by any person or entity other than you or your affiliates as permitted by us; (vii) your use of our trademark(s) without express written consent to do so; or (viii) for any trade secret claim, your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. You will reimburse us for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a product, fix, or service deliverable, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing service deliverable, or (ii) modify the service deliverable or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the allegedly infringing product, fix or service deliverable immediately. If, as a result of an infringement claim, your use of a product, fix, or service deliverable is enjoined by a court of competent jurisdiction, we will, at our option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license for and, as applicable to certain service deliverables, your ownership rights in, the infringing service deliverable.

If any other type of third party claim is brought against you regarding our intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this section. This Section 8 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.



## 9. **Limitations of liability.**

- a. **Limitation.** There may be situations in which you have a right to claim damages or payment. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claims, our total liability (and that of our contractors) will be limited, to the maximum extent permitted by applicable law, to direct damages up to **1.5 times** the amount you have paid under the applicable statement of services, in the aggregate, for the services giving rise to the claims. In the event services or any service deliverables are provided to you on a gratuitous or no-charge basis, our total liability to you will not exceed US\$5000 or its equivalent in local currency. The limitation on direct damages under this paragraph will not apply with respect to the following in connection with the performance of this agreement (or any license or services agreement incorporating these terms):

- (i) our obligations under Section 8 (defense of infringement and misappropriation claim);
- (ii) our liability for damages for gross negligence or willful misconduct, to the extent caused by us or our agent and awarded by a court of final adjudication; and
- (iii) our obligations under Section 5 (confidentiality).

- b. **Exclusion of liability for damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS PRODUCT SERVICES AND SUPPORT AGREEMENT, NEITHER PARTY NOR THEIR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), SPECIAL, OR INCIDENTAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS OR REVENUES ARISING IN CONNECTION WITH THIS PRODUCT SERVICES AND SUPPORT AGREEMENT, ANY STATEMENT OF SERVICES, SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

- c. **Application.** Except as specified expressly in this Section 9, the limitations on and exclusions of liability for damages in this agreement (including any statement of services incorporating these terms) apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

10. **Term and termination.** This Product Services and Support agreement will remain in effect until terminated. The term of any statement of services will be set forth in the statement of services. The parties signing the cover page of this Product Services and Support agreement may terminate it for convenience by giving the other party 30 calendar days prior written notice. In addition, unless otherwise provided in a statement of services, your affiliate that signed the statement of services may terminate it for any reason by giving our affiliate that signed the statement of services 30 calendar days prior written notice. Either party signing the cover page may terminate this Product Services and Support agreement if the other party is (i) in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach or (ii) fails to pay any invoice that is more than 60 calendar days outstanding. Either party signing a statement of services may terminate it if the other party is (i) in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach or (ii) fails to pay any invoice that is more than 60 calendar days outstanding. You agree to pay all fees for services performed and expenses incurred prior to termination and any additional amounts that may be specified in a statement of services.

The sole effect of terminating this Product Services and Support agreement will be to terminate the ability of either party to enter into subsequent statements of services that incorporate the terms of this Product Services and Support agreement. Termination of this Product Services and Support agreement will not, by itself, result in the termination of any statements of services previously entered into (or extensions of the same) that incorporate the terms of this Product Services and Support

agreement, and the terms of this Product Services and Support agreement will continue in effect for purposes of such statements of services unless and until the statement of services itself is terminated or expires. To the extent necessary to implement the termination provisions of this Product Services and Support agreement or any statement of services, each of the parties waives any right it has, or obligation that the other party may have, now or in the future under any applicable law or regulation, to request or obtain the approval, order, decision or judgment of any court to terminate this Product Services and Support agreement or any statement of services.

*"Notwithstanding any other provision of this Contract, if any funds or revenues needed to make any payment hereunder, in the State's sole discretion are insufficient or unavailable for any other reason; or if funds anticipated for the continued fulfillment of the Contract are, at any time, not forthcoming or are insufficient, either through the failure of the State to appropriate funds or funding from a federal funding source is reduced or discontinued for any reason, or through discontinuance or material alteration of the program for which funds were provided, the State shall give the Vendor written notice as soon as practical documenting the lack of funding, discontinuance or program alteration. Unless otherwise agreed to by the parties, the Agreement shall terminate on the last day of the fiscal year for which appropriations were available. However, in the event that an appropriation to cover the cost of this Contract becomes available within sixty (60) days subsequent to termination under this section, the State agrees to re-enter the Agreement with the terminated Vendor under the same provisions, terms and conditions as the original Contract." Furthermore, Microsoft will be paid for all services rendered up to termination.*

11. **Notices.** All notices, authorizations, and requests given or made in connection with this Product Services and Support agreement must be sent by post, express courier, or facsimile to the addresses indicated on the cover page of this Product Services and Support agreement or such other addresses as may be provided in a statement of services. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or facsimile confirmation of delivery.
12. **Insurance.** At all times when we will be performing services on your premises pursuant to this Product Services and Support agreement, we will procure and maintain the following coverages via either commercial insurance, self-insurance, a combination of the two or any other similar risk financing alternative:
  - a) Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$1,000,000 each occurrence;
  - b) Workers' Compensation (or maintenance of a legally permitted and governmentally-approved program of self-insurance) covering Microsoft employees pursuant to applicable state workers' compensation laws for work-related injuries suffered by our employees;
  - c) Employer's Liability with limits of not less than U.S. \$1,000,000 per accident; and
  - d) Communications Liability Errors & Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by us or our employees in the performance of this Product Services and Support agreement, with a limit of liability of not less than U.S. \$2,000,000 per claim.

We will provide you with evidence of coverage on request.

13. **Miscellaneous.**

- a. **Right to subcontract and assignment.** Neither party may assign this Product Services and Support agreement or any statement of services without the written consent of the other. We may use contractors to perform services, in which case we will be responsible for the performance of our contractors. "Contractor(s)" means any third party supplier or other provider of computer technology or related services.
- b. **Independent contractor.** We provide our services as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes owed by us for all of our employees.
- c. **Applicable law; dispute resolution.** This Product Services and Support agreement together with the applicable statement of services will be governed by the laws of your state, without giving effect to its conflict of law provisions. This choice of jurisdiction does not prevent either

party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. Disputes relating to this agreement will be subject to applicable mandatory dispute resolution statutes and regulations of your state. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Product Services and Support agreement or any statements of services.

- d. **Entire agreement.** This Product Services and Support agreement and the statements of services constitute the parties' entire agreement concerning the subject matter hereof, and supersede any other prior and contemporaneous communications. Any terms and conditions maintained by you or your affiliates or contained in any purchase order, other than those mandatory terms required by law, will not apply. The parties signing the cover page of this Product Services and Support agreement may amend this Product Services and Support agreement only in a writing signed by both of them. The parties signing a statement of services may amend the statement of services only in a writing signed by both of them. In the event the terms of this Product Services and Support agreement conflict or are otherwise inconsistent with the terms of any statement of services, the terms of this Product Services and Support agreement will control.
- e. **Survival.** The sections regarding restrictions on use, fees, confidentiality, no other warranties, defense of infringement claims, limitations of liability, term and termination, notices, and miscellaneous of this Product Services and Support agreement, and any provision regarding ownership and license in a statement of services, will survive any termination or expiration of this Product Services and Support agreement or any statement of services. Additionally, as provided in section 10 (Term and termination) above, if this Product Services and Support agreement is terminated all its terms shall survive termination for purposes of any remaining statement of services in existence at the time this Product Services and Support agreement is terminated.
- f. **Severability.** If a court holds any provision of this Product Services and Support agreement or a statement of services to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the Product Services and Support agreement or statement of services to give effect to the stricken clause to the maximum extent possible.
- g. **Waiver.** No waiver of any breach of this Product Services and Support agreement or statement of services will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.
- h. **Force majeure.** Apart from the payment of any amounts due (except due to non-appropriation of funds), neither party shall be liable for performance delays or for non-performance due to causes beyond its reasonable control.
- i. **Cost or pricing data.** We will not, under any circumstances, accept any statement of services that would require the submission of cost or pricing data **other than the prices described in the Public Sector Published Price List.**

#### 14. **Intellectual Property Ownership.**

- a. **Products.** Any products provided pursuant to a statement of services shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. You are responsible for paying any licensing fees associated with products. "Product" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) we make available to you for license which is published by us, our affiliates, or a third party.
- b. **Pre-existing work.** All rights in any computer code or materials (other than products) developed or otherwise obtained by or for us or our affiliates, or you or your affiliates independently of a statement of services ("**pre-existing work**") shall remain the sole property

of the party providing the pre-existing work. During the performance of the services for the statement of services, each party grants to the other party (and our contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services. Upon payment in full, we grant you a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) our pre-existing work in the form delivered to you as part of the service deliverables, and to distribute the object code version of the pre-existing work as part of the service deliverables, and your derivatives thereof, to end users as an integrated part of your software, but not as a standalone product. Your licenses to our pre-existing work is conditioned upon your compliance with the terms of the statement of services and the perpetual license applies solely to our pre-existing work that we leave to you at the conclusion of our performance of the services. **"Service deliverables"** means our pre-existing work licensed to you perpetually and the developments.

- c. **Non-code developments.** Upon payment in full, we assign you sole ownership in all copyrights in any non-code based written materials (other than products or our pre-existing work) developed by us (or in collaboration with you) and provided to you in the course of performance of this work order ("**non-code developments**") and hereby assign all right, title and interest in such copyright to you, provided: i) we retain the right to use, reproduce and modify (for any purpose) copyrightable subsets or modules which by themselves provide generic technical information not unique to your business and ii) your use of the non-code developments is limited to your internal business operations and not for resale or distribution to any third party. Any use of the non code developments contrary to the foregoing restrictions, or to the sublicensing restrictions in the following paragraph, will nullify the transfer of copyright ownership in them, causing the copyright to revert to us.
- d. **Developments.** Upon payment in full, we assign you joint ownership in all rights in any computer code or materials (other than products or pre-existing work) developed by us (or in collaboration with you or customer) and provided to you in the course of performance of this work order ("**developments**"). **"Joint ownership"** means you and we have the right to independently exercise any and all rights of ownership now known or hereafter created or recognized, including without limitation the rights to use, reproduce, modify and distribute the developments for any purpose whatsoever, without the need for further authorization to exercise such rights or any obligation of accounting or payment of royalties. Each party shall be the sole owner of any modifications that it makes based upon the developments.

***For the purpose of this MSA, this Product Services and Support Services Agreement will not be used as a contractual vehicle for you to enter into a contract with us to develop custom application software. Custom application software is defined as a development effort that would result in the production of software that would be utilized solely as an application by your employees or citizens to perform internal business functions.***

***Not excluded under this MSA is development related to the functionality of Microsoft products. Therefore, the purpose of this Product Services and Support Services Agreement is to allow us to assist you in the:***

1. ***Deployment of Microsoft products***
2. ***Securing Microsoft products***
3. ***Operational efficiency of Microsoft products***
4. ***Framework for utilization of Microsoft products; and***
5. ***Access to Microsoft products***

- e. **Distribution.** Any distribution of the service deliverables as permitted by this section must be pursuant to a license agreement that includes (i) a license grant with a statement of ownership and restrictions consistent with the terms of this work order; and (ii) a prohibition against reverse engineering, decompiling and disassembly of code, except to the extent expressly permitted by applicable law despite such limitation.

- f. **Reservation of rights.** All rights not expressly granted in this section are reserved. Additionally, notwithstanding anything to the contrary in a statement of services, you may not give us access to or otherwise incorporate, contribute or combine our pre-existing work or developments with any software or other materials that requires as a condition of use, modification, and/or distribution that our pre-existing work or developments (either in whole or in part) be generally (i) disclosed or distributed in source code or object code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable. This restriction also applies to anyone who obtains service deliverables from you.
- g. **Affiliates rights.** You may grant to your affiliates, as defined above, the right to license the service deliverables granted hereunder but your affiliates may not further sublicense those rights.